

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) MONDAY, THE 8TH
)
JUSTICE CONWAY) DAY OF JUNE, 2020
)

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the “**Applicants**”)

**ORDER
(CRO Appointment)**

THIS MOTION made by Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”) of 3113736 Canada Ltd., 4362063 Canada Ltd., and A-Z Sponge & Foam Products Ltd. (collectively, the “**Applicants**”), for an order appointing Linc Rogers, a partner with the law firm of Blake, Cassels & Graydon LLP (“**Blakes**”) in Toronto, as Chief Restructuring Officer (in such capacity, the “**CRO**”) of the Applicants, was heard on this day by a Judge of the Ontario Superior Court of Justice (Commercial List) through videoconference due to the COVID-19 crisis.

ON READING the Twenty-Second Report of the Monitor (the “**Twenty-Second Report**”), and on hearing submissions of counsel to the Monitor, the Applicants and Domfoam Inc., no one else appearing, although properly served as appears from the affidavit of service of Bobbie-Jo Brinkman sworn June 8, 2020,

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Twenty-Second Report.

SERVICE

2. **THIS COURT ORDERS** that (a) the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof, and (b) authorizes and validates service of the Notice of Motion and the Motion Record via electronic means.

APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

3. **THIS COURT ORDERS** that Mr. Linc Rogers is hereby appointed as CRO, an officer of this Court, over and in respect of the Applicants and shall have the powers and duties specified in this Order.

CRO'S DUTIES

4. **THIS COURT ORDERS** that, subject to the terms of this Order, the CRO is hereby empowered, authorized and directed to:

- (a) in consultation with the Monitor, take any and all steps required in order to resolve:
 - (i) the entitlement of the Domfoam Purchaser's claim to the Dow Settlement Funds and the Domfoam Canadian Polyols Funds; and
 - (ii) the entitlement of the A-Z Purchaser to A-Z Foam's share of the Residual Dow Settlement Funds and the A-Z Canadian Polyols Funds; and

- (b) perform such other duties as required by this Order or by this Court from time to time and such other duties as the CRO and the Monitor may from time to time agree

(collectively, the “**CRO Duties**”).

CRO’S POWERS

5. **THIS COURT ORDERS** that, subject to the terms of this Order, the CRO, in the discharge and fulfilment of the CRO’s Duties, is hereby empowered and authorized to:

- (a) take any and all steps for and in the name of, and on behalf of, the Applicants in connection with the proceedings herein and to instruct counsel to the Applicants in connection with any such steps;
- (b) represent the Applicants in any negotiations with any other party, including creditors, customers, litigants and stakeholders of the Applicants;
- (c) communicate with and provide information to the Monitor and other stakeholders regarding the affairs of the Applicants;
- (d) report to the Court at such times and intervals as the CRO may deem appropriate with respect to any matters that may be relevant to the proceedings herein;
- (e) have full and complete access to the Property, as defined in the Initial Order of this Court dated January 12, 2012 (the “**Initial Order**”);
- (f) engage, give instructions to and pay counsel, consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on

whatever basis the CRO may agree, in consultation with the Monitor, to assist with the exercise of the CRO's powers and obligations;

- (g) take all such steps and actions, enter into and execute all such agreements and documents in the name of and on half of the Applicants, and incur such expenses and obligations necessary or incidental to the exercise of the foregoing powers;

provided that:

- (i) each of the foregoing actions, agreements, expenses and obligations shall be construed to be those of the Applicants and not of Blakes, the CRO, nor any of his partners, employees (and/or employees of Blakes), representatives or agents; and,
- (ii) the Applicants (directly or through its counsel) shall
 - (1) advise the CRO of all material steps taken by the Applicants in these proceedings; and
 - (2) cooperate fully with and provide the CRO with the assistance necessary to enable the CRO to exercise its powers and discharge the CRO Duties.

LIMITATION OF LIABILITY

6. **THIS COURT ORDERS** that the CRO shall not be in Possession of the Property (as such terms are defined in the Initial Order) and shall not, by fulfilling its obligations hereunder be deemed to have taken or maintained Possession of the Property or any part thereof. Without limiting the foregoing, the CRO shall not take possession or be deemed to take possession of any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the Environmental Legislation (as defined in the Initial Order), provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation. The CRO shall not, as a result of this Order or anything done in pursuance of the CRO's Duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless he is actually in possession.

7. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the CRO as an officer of this Court, neither the CRO nor any other CRO Indemnified Party (as defined below) shall be deemed to be a director or trustee of any of the Applicants and the CRO shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part.

INDEMNITY AND INDEMNIFIED PARTIES

8. **THIS COURT ORDERS** that the Applicants shall indemnify and hold harmless the CRO and any of his partners, employees (and/or employees of Blakes), agents or representatives who may assist the CRO with the exercise of his powers and obligations under this Order (collectively, with the CRO, the "**CRO Indemnified Parties**") with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the appointment of the CRO or the fulfilling of the CRO's Duties, including any claims or liabilities subject to indemnification pursuant to this Order, except to the extent the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct. The CRO Indemnified Parties shall be treated as unaffected parties, and the foregoing indemnity shall

be treated as unaffected and may not be compromised, for the purpose of this proceeding or any bankruptcy proceeding with respect to one or more of the Applicants.

9. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO Indemnified Parties, and all rights and remedies of any person against or in respect of the CRO Indemnified Parties are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicants, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days' prior to the return date of any such motion for leave.

10. **THIS COURT ORDERS** that the Applicants' indemnity in favour of the CRO Indemnified Parties shall survive any termination, replacement or discharge of the CRO.

11. **THIS COURT ORDERS** that the appointment of the CRO and the granting of powers and responsibilities of the CRO hereunder will not constitute the sale or disposition of any of the Property.

PROFESSIONAL FEES AND PASSING OF ACCOUNTS

12. **THIS COURT ORDERS** that the Monitor on behalf of the Applicants is hereby authorized to pay to the CRO a retainer in the amount of \$25,000 to be held by the CRO as security for payment of his respective fees and disbursements, outstanding from time to time

13. **THIS COURT ORDERS** that the CRO Indemnified Parties shall submit their accounts to the Monitor for payment by the Applicants, provided however each CRO Indemnified Party

shall not be required to submit a separate account and the CRO may submit consolidated accounts showing the professional fees and disbursements of the CRO Indemnified Parties (the “**CRO Accounts**”). The CRO and the other CRO Indemnified Parties shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, or such alternate rates as may be agreed to by the Monitor. The Applicants are authorized and directed to pay the CRO Accounts on a bi-weekly basis or such other timeframe as the Monitor and the CRO mutually agree.

14. **THIS COURT ORDERS** that the CRO shall pass the CRO Accounts from time to time and for this purpose the CRO Accounts are hereby referred to a Judge of the Ontario Superior Court of Justice (Commercial List).

15. **THIS COURT ORDERS** that the CRO Indemnified Parties shall be entitled to the benefit of the Administration Charge (as defined in the Initial Order) as security for their professional fees and disbursements incurred in respect of these proceedings.

GENERAL

16. **THIS COURT ORDERS** that the CRO shall consult with the Monitor regarding all material issues relating to these proceedings.

17. **THIS COURT ORDERS** that the CRO may resign or the appointment of the CRO may be terminated by further order of this Court at any time.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the CRO in carrying out the terms of this Order. All courts,

tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CRO as may be necessary or desirable to give effect to this Order or to assist the CRO and his agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that the CRO is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CRO is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

20. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order at least seven (7) days' notice to the CRO and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

21. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

Conway J.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736 CANADA LTD., 4362063 CANADA LTD., and
A-Z SPONGE & FOAM PRODUCTS LTD.

Court File No.: CV-12-9545-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**ORDER
(JUNE 8, 2020)**

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